

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : Criminal No. 1:00-CR-00294-01
:
v. : (Judge Rambo)
:
VICTOR MANUEL ARROYO, JR. : (Electronically Filed)

EMERGENCY MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)

AND NOW comes Victor Manuel Arroyo, Jr., by his attorney, James V. Wade, of the Federal Public Defenders Office, and files this Emergency Motion for Relief Under 18 U.S.C. § 3582(c). In support thereof, it is averred as follows:

1. On October 25, 2000, a Grand Jury sitting in the Middle District of Pennsylvania returned a five count Indictment charging Victor Manuel Arroyo with drug trafficking and firearm charges. The drug trafficking related to the distribution and possession with the intent to distribute cocaine base a/k/a "crack."
2. Victor Manuel Arroyo appeared before this Honorable Court on January 23, 2001 and entered a plea of guilty to Count Three of the Indictment charging possession of a firearm by a convicted felon in violation of 18 U.S.C. § 922(g)(1).
3. The Court ordered the preparation of a presentence report.

4. The 2000 edition of the United States Sentencing Guidelines Manual was used to calculate Victor Manuel Arroyo's sentencing guideline range.

5. The presentence report used the cross reference in the firearm guideline and found the base offense level for a crack cocaine offense to be applicable. The presentence report found that the base offense level of 26 was applicable in that Victor Manuel Arroyo was accountable for between 5 grams and less than 20 grams of cocaine base.

6. The presentence report listed the base offense level as 26. The offense level was increased by four levels due to specific offense characteristics and an adjustment. The base offense level was reduced by three levels for acceptance of responsibility. This resulted in a total offense level of 27.

7. Victor Manuel Arroyo was assigned a criminal history category of IV.

8. Victor Manuel Arroyo's sentencing guideline range was 100 - 125 months. Because Victor Manuel Arroyo was subject to a statutory maximum his guideline range was 100 - 120 months.

9. The court adopted the findings of the presentence report.

10. On October 11, 2001, this Honorable Court sentenced Victor Manuel Arroyo to a mid range term of imprisonment of 110 months.

11. Victor Manuel Arroyo is serving this sentence at FCI Fairton.

12. Victor Manuel Arroyo's projected release date is April 26, 2009.

13. On November 1, 2007, the United States Sentencing Commission amended the Drug Quantity Table and reduced the offense level for an offense involving at least 5 grams but less than 20 grams of cocaine base by 2 levels to a level 24. (Amendment 706).

14. On December 12, 2007, the United States Sentencing Commission announced its decision to apply the amendments to the crack guidelines retroactively effective March 3, 2008 and listed Amendment 706 in the new U.S.S.G. § 1B1.10(c).

15. Pursuant to 18 U.S.C. § 3582(c)(2), "in the case of a defendant who has been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission . . . upon motion of the defendant . . . the court may reduce the term of imprisonment, after considering the factors set forth in section 3553(a) to the extent that they are applicable, . . ."

16. Under the retroactive application of the amendment to the sentencing guidelines, Victor Manuel Arroyo's base offense level is 24 and with a 4 level increase for a specific offense characteristic and an adjustment. Furthermore a 3 level reduction was given for acceptance of responsibility. The total offense level is 25.

17. An offense level of 25 and a criminal history category of IV results in a now advisory guideline imprisonment range of 84 to 105 months.

18. A mid-range sentence will result in a new sentence of between 94 and 95 months.

19. Because Victor Manuel Arroyo had been sentenced to a term of imprisonment based on a sentencing range that has subsequently been lowered by the Sentencing Commission, he moves this Honorable Court to reduce the term of imprisonment in accordance with 18 U.S.C. § 3582(c)(2) to a time served sentence.

20. Counsel requests that the time served sentence be effective on March 3, 2008.

21. Defense counsel has communicated with Acting United States Attorney Martin C. Carlson who indicated that he would be filing a separate response agreeing that Mr. Arroyo is entitled to relief.

WHEREFORE, it is respectfully requested that this Honorable Court grant the foregoing Motion for Relief Under 18 U.S.C. § 3582(c).

Respectfully submitted,

Date: February 14, 2008

s/ James V. Wade

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I, Victor Manuel Arroyo have reviewed the above motion for reduction of sentence and concur in this request.

Victor Manuel Arroyo

CERTIFICATE OF SERVICE

I, James V. Wade, Federal Public Defender for the Middle District of Pennsylvania, do hereby certify that I served a copy of the foregoing **EMERGENCY MOTION FOR RELIEF UNDER 18 U.S.C. § 3582(c)(2)**, via Electronic Case Filing, or by placing a copy in the United States mail, first class in Harrisburg, Pennsylvania, addressed to the following:

MARTIN C. CARLSON, ESQUIRE
Assistant United States Attorney
[REDACTED]
[REDACTED]
[REDACTED]

DREW THOMPSON
United States Probation Office
[REDACTED]
[REDACTED]
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VICTOR MANUEL ARROYO, JR.

[REDACTED]
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Date: February 14, 2008

s/ James V. Wade

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